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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/614,811  | 07/09/2003  | Masahiko Ogawa       | 240004US0CONT       | 8031             |
| 22850   | 7590        | 11/03/2004           |                     |                  |
| OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.<br>1940 DUKE STREET<br>ALEXANDRIA, VA 22314 |             |                      |                     |                  |
| EXAMINER<br>ELHILO, EISA B  |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 1751  |             |                      |                     |                  |

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/614,811

Applicant(s)

OGAWA ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1 This action is responsive to the amendment filed on 8/13/2004.

2 Objection to claim 6, is withdrawn because of the applicant's amendment.

3 The rejection of claims 3-14 under 35 U.S.C. 103(a) as being unpatentable over Massoni (US 6,187,058) in view of Chan et al. (US 5,368,610) is maintained for the reasons set forth in the previous office action that mailed on 5/28/2004.

#### *Response to Applicant's Arguments*

4 Applicant's arguments filed 8/13/2004 have been fully considered but they are not persuasive.

With respect to the rejection based upon Massoni (US' 058) in view of Chan (US' 610), Applicant argue that Massoni does not teach a specific combination of ammonia or an ammonium salt with carbonate. Applicant also argue that the quaternary ammonium salt that disclosed by Massoni is used as hair conditioning agent and not utilize to adjust the pH as claimed. Applicant further argues that neither of the two phases contains a metal salt component such as an iron salt. Applicant furthermore argues that the two references are not properly combinable because Massoni teaches two components formulation while Chan teaches a single formulation for the oxidative dyeing hair. Applicant furthermore, argues that Massoni teaches hydrogen peroxide in acidic medium as an oxidizing agent (developer) while Chan teaches sodium chlorite is a basic aqueous medium as an oxidizing agent and thus, the two references can not be reasonably combined to suggest the present invention.

The examiner respectfully disagrees with the above arguments because of the following reasons.

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With regard to the argument that the reference of Massoni does not disclose the specific combination of ammonium or an ammonium salt with carbonate in such a way that renders obvious the claimed composition, the examiner position is that the reference teach and disclose all the claimed dyeing ingredients no matter how these ingredients presented in the reference since these ingredients are part of the dyeing compositions taught by the reference and do not require to be added or arranged in specific order.

With respect to the argument that the quaternary ammonium salt that disclosed by Massoni is used as hair conditioning agent and not utilize to adjust the pH as claimed, the examiner position is that Massoni (US' 058) teaches and discloses a dyeing composition comprising quaternary ammonium salts, and, thus a person of an ordinary skill in the art would expect that the quaternary ammonium salts would have similar physical properties to those claimed, and can be used in the hair dyeing formulation for different purposes. Further, the recitation of a new intended use for an old product does not make a claim to that old product patentable. (*In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997)).

With respect to the argument that neither of the two phases disclosed by Massoni contain a metal salt component such as an iron salt, the examiner position is that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With respect to the arguments that the combination of the references is improper because Massoni teaches two components formulation wherein hydrogen peroxide is used in acidic medium as an oxidizing agent, while Chan teaches a single formulation in which sodium chlorite

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is used in a basic aqueous medium as an oxidizing agent for the oxidative dyeing hair, the examiner position is that Chan (US' 610) also teaches a hair dyeing composition that can be formulated into separate components (separate boxes) (see col. 4, lines 14-21). Further, Chan (US' 610) clearly teaches and discloses that there is an advantage to the composition when the actual coloring of the hair can be performed at a pH from 6 to 9 (acidic, neutral and alkaline) rather than under the strongly basic conditions (see col. 3, lines 5-7), which implies that sodium chlorite can be used in acidic medium (pH 6). Therefore, these arguments are not persuasive and the combination of the references is proper.

5     **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

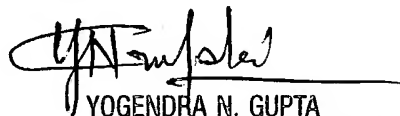
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supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
October 23, 2004



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SUPERVISORY PATENT EXAMINER  
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